CARPENTRY UNLIMITED, INC.

IBLA 81-448 Decided March 9, 1982

Appeal from a decision of the Colorado State Office, Bureau of Land Management, setting the rental charges for use of right-of-way C-27015.

Affirmed.

1. Rights-of-Way: Generally

> Where a subdivision builder is granted a right-of-way for an access road and bridge pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), with the understanding that a county or town will take over the right-of-way, but an assignment to the county or town has not been approved by BLM, the builder is liable for the rental, and the exemption from payment of rental for a local government under 43 CFR 2803.1-2(c)(1) does not apply.

APPEARANCES: Carpentry Unlimited, Inc. (Carl M. Dietz), Vail, Colorado, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Carpentry Unlimited, Inc., has appealed a decision of the Colorado State Office, Bureau of Land Management (BLM), dated February 3, 1981, setting the fair market rental value for a right-of-way for an access road and bridge at $3,560 per year. The decision stated that the first year rental period would begin October 1, 1979, and end October 30, 1980; that after application of the advanced rental deposit, the balance of $7,095 was due and payable to BLM; and that this amount covered the rental period beginning October 1, 1979, and ending September 30, 1981.

Under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701, 1761-1771 (1976), BLM granted by decision of October 1, 1979, right-of-way C-27015 to appellant with an expiration date of September 30, 2009. The grant authorized a right-of-way of 80-feet wide for an access road and bridge with $25 advance rental deposit and subject to the

payment terms of item 17 of the decision. In brief, item 17 provides that appellant took the grant subject to a determination of the fair market value and with the agreement that appellant would submit the required payment in a timely manner and that failure to do so would result in summary termination of the right-of-way grant without an administrative proceeding. BLM also reserved the right to review the fair market value determination at reasonable intervals and to adjust it if necessary to insure the payment of full market value of the right-of-way to the United States. After an appraisal of the right-of-way with a valuation date of July 17, 1980, the grant was amended to reflect a fair market value rental of $3,560 annually.

On appeal appellant contends that an annual rental fee, in view of the following facts it alleges, would be inappropriate at this time: At the time appellant received approval to build in the Intermountain Subdivision, an access road and bridge was being required by the Eagle County Board of Commissioners in order to provide a second ingress and egress into that area to protect the health and welfare of the local residents. Appellant agreed to construct a new bridge and road, which necessitated acquiring a right-of-way from BLM. It understood that the new bridge and road, after completion, would be dedicated to and taken over by the county, that the right-of-way was strictly for the county's use; and appellant asserts it never intended to have any control over the right-of-way. Appellant also mentions that the town of Vail is presently negotiating with BLM to take over the remaining BLM ground in that area for a public park. In sum, appellant contends that the right-of-way was always intended for the use of the general public.

[1] The decision which grants the right-of-way lists the name of the grantee as "Carpentry Unlimited, Inc.," and sets forth terms and conditions of the grant, including item 15, which states:

> That the right-of-way granted herein cannot be conveyed, assigned, or otherwise transferred, in whole or in part, without prior written approval by the Bureau of Land Management. Any transfer will be subject to regulations existing and such other terms, conditions and stipulations deemed necessary at the time of approval of such transfer.

Appellant requested the right-of-way, received the grant, and has built a road and bridge on the right-of-way. No person and no entity has sought to have the right-of-way assigned to Eagle County or the town of Vail; nor has any such assignment been approved by BLM, as was required by the decision authorizing the right-of-way. In these circumstances, we find that only appellant is now the holder of record of the right-of-way. Compare Grace Petroleum Corp., 62 IBLA 180 (1982); Reichhold Energy Corp., 40 IBLA 134 (1979). As the holder of record of the right-of-way, appellant is liable for the rental and is legally obligated to pay it. If and when an assignment of the right-of-way to the county or to the town is approved by BLM, then the holder of the right-of-way, as a local government, may possibly qualify for the exemption from payment of the fair market rental value, as provided for

in 43 CFR 2803.1-2(c)(1). 1/ See Continental Telephone of the West, 35 IBLA 279 (1978). There is no contention here that the fair market value ascertained as the rental is excessive or that the appraisal is in any way wrong or incorrect. For the foregoing reasons we conclude that BLM has correctly found in its decision below that appellant is responsible for the payment of the rental on right-of-way C-27015.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ 43 CFR 2803.1-2(c)(1) provides:

"(c) No fee, or a fee less than fair market rental, may be authorized under the following circumstances:

"(1) When the holder is a Federal, State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue is customer charges."